

When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling Price" of the tangible personal property being sold for the purpose of calculating Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.435(a)(1). (This is a GIL.)

December 28, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated November 19, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am enclosing a copy of one of our invoices that we write for our customers. You will note that there is a line for UST Tax computation and a line for Environmental Impact Fee computation, which is added into the total sale, then sales tax is added on to make the total invoice.

We have been collecting this Illinois Sales Tax from our customers and we have been sending in this sales tax on form ST-1 each month.

It appears to us that we are charging tax on tax to our customer. Is this the correct way to charge Illinois Sales Tax (6.25%)? I am requesting a Letter Ruling concerning this question. We have talked to two different Illinois State representatives with the Illinois Department of Revenue, who have told us we must collect this tax on tax. Today my accountant spoke with a PERSON with the Illinois Department of Revenue, who understands our question, and advised us to ask for this ruling.

Thanks for your consideration in this matter. If there are additional questions, please call my accountant, PERSON2.

When deciding the question about whether a particular tax is included in the base for computing Retailers' Occupation Tax one must look at the statute or tax act to see upon whom the taxing government (whether federal, state or local) has placed the legal incidence of the tax. Please see 86 Ill. Adm. Code 130.435 State and Local Taxes Other Than Retailers' Occupation Tax, enclosed, for further information. Please note the motor fuel tax, the cigarette tax and the liquor gallonage tax that are referenced therein are illustrative examples for the general rules.

When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling price" of the tangible personal property for the purpose of calculating Retailers' Occupation Tax, Section 130.435(a)(1). On the other hand, when the legal incidence of a tax is not imposed on the consumer but is imposed at a higher level in the distribution chain, e.g. upon the manufacturer, importer, or distributor, then the amounts of the retail selling price of the tangible personal property that represents these taxes is includable in the base and cannot be deducted in computing Retailers' Occupation Tax.

Provisions of Section 2a of the Motor Fuel Tax Act (35 ILCS 505/2a) impose an Underground Storage Tank Tax, on and after January 1, 1990 and before January 1, 2013, at the rate of three-tenths of a cent per gallon upon the privilege of being a receiver in this State of fuel. Beginning January 1, 1996, provisions of P.A. 89-0457 caused receivers of fuel to become subject to an Environmental Impact Fee of \$60.00 per 7,500 gallons of fuel, or an equivalent amount per fraction thereof, sold or used in Illinois. The Underground Storage Tank Tax and the Environmental Impact Fee are includable in gross receipts subject to Retailers' Occupation Tax because those taxes are imposed at the manufacturer or importer level (see 35 ILCS 505/1.20 for the definition of receiver) and not upon the consumer. Although the legal incidence of these taxes is upon receivers of fuel, they are usually passed on to purchasers of fuel by contract or through increased prices.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl Betz
Associate Counsel

KB:msk
Enc.